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IN THE COURT OF APPEALS OF INDIANA

ETAKASE COLLINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0611-CR-1054
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William E. Young, Judge
The Honorable Patrick Murphy, Commissioner
Cause No. 49G20-0310-FC-184761

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Etakase Collins appeals his convictions for possession of cocaine while in possession of a firearm as a class C felony[1] and possession of cocaine as a class D felony.[2] Collins raises one issue, which we revise and restate as whether the trial court abused its discretion by admitting cocaine and a firearm into evidence. We affirm.

The relevant facts follow. On October 23, 2003, Indianapolis Police Department Officers Karla Baldini and Richard Riddle were on patrol looking for two suspects in connection with a recent homicide. They stopped at the house of Collins's parents, which the suspects were known to frequent. As the officers pulled in front of the house, two juveniles who had been in the yard with an older gentleman "hopped up" and "ran inside quickly." Transcript at 57. Officer Baldini knocked at the front door while Officer Riddle spoke with the older gentleman. One of the juveniles answered the door, and Officer Baldini asked them both to come outside and talk to her about the homicide. She asked the boys if there was anyone else in the house with them, and they replied that their older brother was in the bathroom. Officer Baldini then entered the house, stepped into the living room, and yelled, "Police, . . . who else is here?" Id. at 132. Collins yelled back: "I'm in the bathroom." Id. at 133. She asked him to come out when he was

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[1] Ind. Code § 35-48-4-6 (2004) (subsequently amended by Pub. L. No. 151-2006, § 24 (eff. July 1, 2006)).

[2] Id.

finished, and he replied, "I'll be out in a minute." Id. Officer Baldini returned outside to interview the juveniles and the older gentleman.

A minute later, Collins emerged from the house, and Officer Baldini questioned him about the homicide. Out of habit, she radioed the Communication Center to see if Collins had any open warrants for his arrest. When the dispatcher radioed back that Collins had an outstanding warrant, Officer Baldini placed him in handcuffs and began gathering items from his pockets, among which she found a baggie of crack cocaine, $400 in cash, and a handgun permit. Collins "started yelling" at Officer Baldini and accused her of planting the crack cocaine in his pocket. Id. at 136. When Officer Baldini questioned Collins about the handgun permit, he told the officers that he had left his gun in the bathroom. Concerned about leaving the gun behind with the two juveniles, Collins asked Officer Riddle to retrieve it, which Officer Riddle did.

The State charged Collins with possession of cocaine while in possession of a firearm as a class C felony and possession of cocaine as a class D felony. Before trial, Collins filed a motion to suppress the cocaine and the handgun, arguing that Officer Baldini's actions violated his rights secured by the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution. After a hearing, the trial court denied the motion to suppress.

At the trial, Collins objected to the admission of the cocaine and firearm into evidence. He testified that, on the morning of his arrest, he had returned home from his "daughter's mother's house" to shower and use the bathroom. Id. at 105. He took off his

pants and grabbed his handgun, wallet, some important papers, and a telephone to call the Bureau of Motor Vehicles while in the bathroom. After Officer Baldini asked him to come outside, he donned a random pair of pants from the "dirty clothes hamster [sic]," stuck his wallet and papers in the pockets, flushed the toilet, and followed her out. Id. at 116. The jury found Collins guilty as charged, and the trial court sentenced him to a term of four years in the Indiana Department of Correction with two years suspended.

Although Collins originally challenged the admission of the cocaine and the handgun through a motion to suppress, he now challenges their admission at trial. "Thus, the issue is . . . appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial." Lundquist v. State, 834 N.E.2d 1061, 1067 (Ind. Ct. App. 2005) (quoting Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003)). Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. Id. (citing Ackerman v. State, 774 N.E.2d 970, 974-75 (Ind. Ct. App. 2002), trans. denied). We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), reh'g denied. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Lundquist, 834 N.E.2d at 1067 (citing Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied). However, we must also consider the uncontested evidence favorable to the defendant. Id. Even if the trial court's decision was an abuse of discretion, we will not reverse if the admission constituted harmless

error. Fox v. State, 717 N.E.2d 957, 966 (Ind. Ct. App. 1999), reh'g denied, trans. denied. Collins argues that Officer Baldini violated his rights secured by the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Indiana Constitution and, therefore, that the trial court abused its discretion by admitting the cocaine and the handgun into evidence.

We begin by addressing Collins's Fourth Amendment claims. Collins does not dispute that his arrest pursuant to an open warrant was legal or that Officer Baldini legally searched his person incident to the arrest. Rather, he argues that Officer Baldini's initial entry into his home "goes beyond the bounds of a knock and talk," that she illegally seized him, and that, but for the illegal entry, Officer Baldini never would have "encountered" him or found the cocaine and the firearm. Appellant's Brief at 10, 12. The Fourth Amendment to the Constitution of the United States protects citizens against unreasonable searches and seizures. Redden v. State, 850 N.E.2d 451, 458 (Ind. Ct. App. 2006) (citing Trimble v. State, 842 N.E.2d 798, 801 (Ind. 2006), adhered to on reh'g by 848 N.E.2d 278 (Ind. 2006)), trans. denied. A knock and talk investigation "involves officers knocking on the door of a house, identifying themselves as officers, asking to talk to the occupant about a criminal complaint, and eventually requesting permission to search the house." Id. (quoting Hayes v. State, 794 N.E.2d 492, 496 (Ind. Ct. App. 2003), trans. denied.). Such "knock and talk" investigations do not per se violate the Fourth Amendment. Id.

"The prevailing rule is that, absent a clear expression by the owner to the contrary, police officers, in the course of their official business, are permitted to approach one's dwelling and seek permission to question an occupant." Hayes, 794 N.E.2d at 496. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude a 'seizure' has occurred." Id. (quoting State v. Carlson, 762 N.E.2d 121, 125 (Ind. Ct. App. 2002)). A seizure does not occur simply because a police officer approaches a person, asks questions, or requests identification. Id. Courts examining the Fourth Amendment implications of the knock and talk procedure have held that a seizure occurs when, "taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" Id. (quoting Kaupp v. Texas, 538 U.S. 626, 629, 123 S.Ct. 1843, 1845 (2003)).

Collins relies on Ware v. State, 782 N.E.2d 478, 481 (Ind. Ct. App. 2003), reh'g denied, for the proposition that the "warrantless physical entry of a police officer into a home for the purpose of search and seizure is presumptively unreasonable under the Fourth Amendment . . . ." Appellant's Brief at 10. In that case, an officer knocked on the defendant's door to ask him questions about an unrelated case. Ware, 782 N.E.2d at 480. When the defendant opened the door, the officer smelled marijuana and asked the defendant to provide his identification. The defendant shut the door, but the officer could hear him walking around inside. Three minutes later, he returned with his identification.

The officer entered defendant's apartment and read the defendant his Miranda warnings. After the defendant consented to a search of the apartment, the officer found several items of contraband. On appeal, the State argued that exigent circumstances, namely, the officer's fear that the contraband would be destroyed, justified his warrantless entry into the apartment. Id. at 481. We reversed, finding that the State did not meet its burden of proving that the officer had an objective and reasonable fear that the contraband would be destroyed. Id. at 482. Accordingly, we held that the defendant's consent, being the product of an illegal entry, was invalid, and that the trial court abused its discretion by not suppressing evidence obtained from the illegal search. Id. at 483.

Here, when the juveniles answered the door, Officer Baldini asked them to come outside to discuss a recent homicide. She asked them whether anyone else was present, and they answered that their older brother was in the bathroom. She then entered the house and said, "Police . . . who else is here?" Transcript at 132. Collins yelled back: "I'm in the bathroom." Id. at 133. Although Officer Baldini did not request permission to enter the house, and therefore was improperly inside, there was no evidence presented that she searched it. See Hardister v. State, 849 N.E.2d 563, 572 (Ind. 2006) ("A 'search' involves an exploratory investigation, prying into hidden places, or a looking for or seeking out."). Nor did the entry result in any evidence admitted at trial. She merely asked Collins to meet her outside, presumably to discuss her investigation, and then left the house. The cocaine and firearm were discovered later during a lawful search after she had arrested him on the open warrant. See Culpepper v. State, 662 N.E.2d 670, 675 (Ind.

Ct. App. 1996) ("Incident to a lawful arrest, the arresting officer may conduct a warrantless search of the arrestee's person and the area within his or her immediate control."), trans. denied.

Furthermore, when she asked Collins to come out, he replied, "I'll be out in a minute." Transcript at 132. Officer Baldini then returned outside to interview the juveniles and the older gentleman. She did not restrain Collins by means of physical force or show of authority until after he voluntarily emerged from the house and Officer Baldini learned that there was an open warrant for his arrest. Although Collins claims that she "stayed in the house and escorted him to the porch" and that "one of the juveniles was handcuffed upon exiting the house," we cannot reweigh the evidence. Appellant's Brief at 8, 12. Because Collins stated that he would "be out in a minute," we conclude that Collins felt free to ignore the police presence and go about his business, and, therefore, that no seizure occurred during this exchange.[3] See Hayes, 794 N.E.2d at 498 (holding that no illegal seizure occurred as a result of the knock and talk investigation). Thus, although we have noted that a knock and talk investigation is "inherently coercive

[3] Collins also argues that Officer Baldini's request for Collins's identification violated his Fourth Amendment rights. However, there was no evidence presented that she requested his identification. In fact, Collins quotes Officer Baldini's statement that she had previously had "several run ins with [him], traffic arrests . . . ." Appellant's Brief at 8. Furthermore, even if she had requested his identification, "a seizure does not occur simply because a police officer approaches a person, asks questions, or requests identification." Hayes, 794 N.E.2d at 496.

to some degree," we cannot say that an illegal search and seizure occurred here.[4] Id. at 496.

Collins also argues that the knock and talk investigation and resulting evidence violated his rights under Article I, Section 11 of the Indiana Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Although this language tracks the Fourth Amendment verbatim, we proceed somewhat differently when analyzing the language under the Indiana Constitution than when considering the same language under the Federal Constitution. Redden, 850 N.E.2d at 460 (citing Trimble, 842 N.E.2d at 803). "Instead of focusing on the defendant's reasonable expectation of privacy, we focus on the actions of the police officer, concluding that the search is legitimate where it is reasonable given the totality of the circumstances." Trimble, 842 N.E.2d at 803. We will consider the following factors in assessing reasonableness: "1) the degree of concern, suspicion, or knowledge that a

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[4] Collins devotes much of his brief to arguing that Officer Baldini did not have reasonable suspicion to detain him, that an "officer requesting identification makes a casual inquiry become a stop," and that Officer Baldini's actions "resulted in an illegal detention or stop." Appellant's Brief at 7-9. Thus, he appears to argue that Officer Baldini's actions constituted a Terry stop. It is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity "may be afoot." Overstreet v. State, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000) (quoting Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868 (1968)), trans. denied. Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be justified by mere reasonable suspicion. Id. We note that the present case took place in Collins's home and front yard, and not "on the street," and is therefore more like a "knock and talk"

violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." Id. (quoting Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005)).

Here, when the juveniles answered the door, Officer Baldini asked them to come outside to discuss a recent homicide. She asked them whether anyone else was present, and they answered that their older brother was in the bathroom. She then entered the house and said, "Police . . . who else is here?" Transcript at 132. Collins yelled back: "I'm in the bathroom." Id. at 133. Although Officer Baldini did not request permission to enter the house, there was no evidence presented that she searched it. When she asked Collins to come out, he replied, "I'll be out in a minute." Id. at 132. Officer Baldini then returned outside to interview the juveniles and the older gentleman.

When Collins emerged from the house, Officer Baldini questioned him about the homicide. She learned that Collins had an outstanding warrant for his arrest, placed him in handcuffs, and, incident to the arrest, found a baggie of crack cocaine, $400 in cash, and a handgun permit in his pockets. Collins asked Officer Riddle to retrieve his gun from the bathroom because he was concerned about leaving it behind with the two juveniles, and Officer Riddle retrieved the gun. Under the totality of the circumstances, we conclude that the officers' knock and talk investigation and the subsequent discovery

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scenario. See id.

of the evidence was reasonable.[5] See, e.g., Redden, 850 N.E.2d at 461 (holding that the officers' knock and talk investigation and subsequent discovery of evidence was reasonable). The trial court did not abuse its discretion by admitting the evidence.

For the foregoing reasons, we affirm Collins's convictions for possession of cocaine while in possession of a firearm as a class C felony and possession of cocaine as a class D felony.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur

[5] Collins argues in his reply brief that, once in custody, he should have been given a Pirtle warning before Officer Baldini questioned him about the handgun. Collins did not make this argument in his appellant's brief. An argument raised for the first time in a reply brief is waived. See, e.g., Felsher v. Univ. of Evansville, 755 N.E.2d 589, 593 n.6 (Ind. 2001).